Oct 19 1876
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~257.~~ 61

THE UNITED STATES, PLAINTIFFS IN ERROR,

VS.

BERNARD LARIVIERE AND CHARLES GRANT, CLAIMANTS OF FORTY-THREE GALLONS OF WHISKEY AND OTHER PROPERTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Second case

FILED SEPTEMBER 19, 1874.

Post

Oct 28 1876

Reversed

Jus Davis

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1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the eighth circuit and district of Minnesota, greeting:

Because in the record and proceedings, and also in the rendition of a judgment which is in the said circuit court before you, between the United States of America, plaintiff in error, and Thirty-three Fox Pelts, forty-three gallons of whiskey, and other property, and Bernard Lariviere and Charles Grant, defendants in error, a manifest error hath happened, to the great damage of the said United States of America, plaintiff in error, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceed-
2 ings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

[SEAL.] H. E. MANN,
Clerk of the United States Circuit Court
for the District of Minnesota.

3 The answer of the judges of the circuit court of the United States for the district of Minnesota in the within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at St. Paul, in the district of Minnesota, this second day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, District of Minnesota.

4 (Indorsed:) Supreme Court of the United States. Writ of error to U. S. circuit court, 8th circuit, dist. of Minn. The United States, plff. in error, vs. Bernard Larriviere and Charles Grant, defts. in error. Filed June 27, 1874. H. E. Mann, clerk. Wm. W. Billson, U. S. atty. for plff. in error.

5 SCHEDULE.

UNITED STATES OF AMERICA, *ss:*

To Bernard Lariviere and Charles Grant, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, to be held at the United States court-room in the city of St. Paul, in and for the district of Minnesota, on the fifteenth day of June next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of Minnesota, wherein the said United States of America is plaintiff and you are claimants in a case of seizure on land, and defendants in error, to show cause, if any there be, why the decree in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Rensselaer R. Nelson, judge of U. S. dist. court, dist. of Minnesota, this 16th day of May, in the year of our Lord one thousand eight hundred and seventy-four.

R. R. NELSON,
U. S. Dist. Judge.

6 (Indorsed:) On writ of error from U. S. circuit court to U. S. dist. court, dist. of Minn. United States vs. 33 Fox Pelts, 43 gallons of whiskey, & other property, Bernard Lariviere and Charles Grant, claimants, defts. in error. Citation upon error. Filed May 16, 1847. Wm. A. Spencer, clerk.

Due service of the within by copy admitted this 16th day of May, 1874.

DAVIS, O'BRIEN & WILSON,
Attys. for Lariviere.
GORMAN & McCARTY,
Attys. for Grant.
WM. W. BILLSON,
U. S. Atty. for Minn.

7 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the district of Minnesota, greeting:

Because in the record and proceedings, and also in the rendition of a final sentence and decree which is in the said district court before you, and between the United States of America and Thirty-three Fox Pelts, forty-three gallons of whiskey, and other property, whereof Bernard Lariviere and Charles Grant are the claimants and defendants, a manifest error hath happened, to the great damage of the said United States, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the eighth
circuit and district of Minnesota, together with this writ, so that
8 you have the same at the court-room of the United States in the
city of St. Paul, in the said district, on the third Monday, being

the fifteenth day of June next, in the said circuit court to be then and there held, that, the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, this eleventh day of May, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

{ SEAL OF U. S. } H. E. MANN,
{ CIRCUIT COURT. } *Clerk of U. S. Circuit Court, Dist. of Minnesota.*

9 (Indorsed :) Writ of error from U. S. circuit court, dist. of Minnesota, to U. S. dist. court, dist. of Minn. The United States vs. Thirty-three fox-pelts, 43 gallons of whiskey, and other property, Bernard Lariviere and Charles Grant, claimants. Filed May 16, 1874. Wm. A. Spencer, clerk. Wm. W. Billson, U. S. dist. atty. for Minn.

10 District court of the United States, district of Minnesota.

To the honorable Rensselaer R. Nelson, judge of the district court of the United States for the district of Minnesota:

William W. Billson, attorney of the United States in and for the district of Minnesota, who prosecutes in this behalf as well in the name of the United States as of whomsoever may be entitled to a moiety of the forfeitures hereinafter mentioned, gives the court now here to understand and be informed:

First. That Bernard Lariviere, a white person, late of the village of Crookston, in the county of Polk, in the district aforesaid, yeoman, heretofore, to wit, on the second day of February, in the year of our Lord one thousand eight hundred and seventy-four, in the county of Polk, in the State and district of Minnesota, and within the jurisdiction of this court, with force and arms, unlawfully did carry and introduce, in and upon some vehicle, boat, or conveyance to the said attorney unknown, from some place and territory outside of the Indian country, and outside of the ceded country hereinafter mentioned, to the said attor-
11 ney unknown, into the country ceded to the said United States
by the Red Lake and Pembina bands of Chippewa Indians, in and by the treaty between the said United States and the said bands of Chippewa Indians, made and concluded in Minnesota on the 2d day of October, in the year of our Lord one thousand eight hundred and sixty-three, and proclaimed by the President of the United States on the fifth day of May, in the year of our Lord one thousand eight hundred and sixty-four, to wit, into that part thereof and included and being in the county of Polk, in the State and district aforesaid, certain spirituous liquors, to wit, forty-three gallons of whiskey, ten gallons of Iron Mountain whiskey, two gallons of cherry brandy, two gallons of Jamaica rum, and twenty gallons of bitters, the said bitters being then and there composed mainly of alcohol.

Which said introduction of spirituous liquors was then and there in violation of the provisions of section twenty of the act of Congress entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved June thirtieth, in the
year of our Lord one thousand eight hundred and thirty-four,
12 as the same is amended by the act of Congress entitled " An act
to amend an act entitled 'An act to regulate trade and intercourse

with the Indian tribes, and to preserve peace on the frontiers,'" approved March fifteenth, one thousand eight hundred and sixty-four, and was contrary to the provisions of the treaty aforesaid, and contrary to the form of the statutes of the United States in such case made and provided.

That on the 10th day of March, in the year of our Lord one thousand eight hundred and seventy-four, the said Bernard Lariviere had and owned a large quantity of goods, packages, and peltries, which are fully and particularly described in the schedule hereto annexed, which were then in his possession at said Crookston, in the said county of Polk, in the said State and district, and in the said ceded country, and within the jurisdiction of this court, and that on the said last-mentioned day R. M. Pratt, who was then and there an Indian agent duly appointed by the United States, having reason to suspect and having been informed that the said Bernard Lariviere had introduced into the aforesaid
13 country, so ceded to the United States as aforesaid, certain spirituous liquors, in violation of the provisions of the said act of Congress as amended, as aforesaid, searched and caused to be searched the aforesaid stores, packages, and peltries, and the places of deposit of the said Bernard Lariviere then and there which were then and there in the said county and State, and that upon such search the spirituous liquors hereinbefore described were then and there found therein stored, packed, and mingled with and in the aforesaid goods, packages, peltries, and places of deposit, and so carried and introduced as aforesid by the said Bernard Lariviere into the said ceded country contrary to the form of the statutes of the United States in such case made and provided.

That the said R. M. Pratt, duly appointed Indian agent as aforesaid, then and there, in the said ceded country, ceded to the United States in and by the treaty aforesaid, in the said county of Polk and district aforesaid, within the jurisdiction of this court, and on land, seized and took, and caused to be seized and taken, as forfeited, as such Indian agent, all of the said liquors and all of the said goods, packages, and
14 peltries of the said Bernard Lariviere so found and being in the said ceded country which are hereinbefore mentioned, and which are fully and particularly described in the schedule hereto annexed, and made a part hereof, and now holds possession of the same at the said Crookston, in the said county of Polk, in the State and district aforesaid, in the said ceded country, and within the jurisdiction of this court, to be disposed of as the court shall direct.

Second. That Bernard Lariviere aforesaid, a white person, late of the village of Crookston, in the county of Polk, in the district aforesaid, yeoman, heretofore, to wit, on the second day of February, in the year of our Lord one thousand eight hundred and seventy-four, in the county of Polk, in the State and district of Minnesota, and within the jurisdiction of this court, with force and arms unlawfully did carry and introduce in and upon some vehicle, boat, or conveyance to the said attorney unknown, from some place and territory outside of the Indian country, and outside of the ceded country hereinafter mentioned as ceded to the United States, to the said attorney unknown, into the country ceded to
15 the United States by the Red Lake and Pembina bands of Chippewa Indians, in and by the treaty between the said United States and the said bands of Chippewa Indians, made and conducted in Minnesota, on the second day of October, in the year of our Lord one thousand eight hundred and sixty-three, and proclaimed by the President of the United States on the fifth day of May, in the year of our Lord one thousand eight hundred and sixty-four, with the intent then and there

entertained by him, the said Bernard Lariviere, to sell, dispose of, and distribute the said spirituous liquors to and among the bands and tribes of Chippewa Indians then and there under the charge of Indian agents duly appointed by the United States, and frequenting then and there the said county of Polk and village of Crookston, and living then and there in and near the same, the whole of said country so ceded, and particularly that part thereof included and being in the said county of Polk, being then and there a wild, uncultivated, and sparsely-settled country, frequented and inhabited mainly by the aforesaid Chippewa Indians, and lying and being then and there, and at all times prior thereto, adja-
16 cent to and immediately adjoining certain lands set apart for and ex-
clusively occupied by the said Chippewa Indians as their reservation, to wit, into that part of said ceded country included then and there and being in the county of Polk, in the State and district aforesaid, certain spirituous liquors, to wit, forty-three gallons of whiskey, ten gallons of Iron Mountain whisky, two gallons of cherry brandy, two gallons of Jamaica rum, and twenty gallons of bitters, the said bitters being then and there composed mainly of alcohol; which said introduction of spirituous liquors as aforesaid was then and there not by order of the War Department of the United States, nor any officer duly authorized thereunto by the said War Department, and which said introduction of spirituous liquors was then and there in violation of section twenty of the act of Congress entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved June thirtieth, in the year of our Lord one thousand eight hundred and thirty-four, as the same is amended by the act of Congress entitled "An act to amend an act entitled 'An act to regulate trade and inter-
17 course with the Indian tribes, and to preserve peace on the fron-
tiers,'" approved March fifteenth, one thousand eight hundred and sixty-four, and was contrary to the provisions of the treaty aforesaid and contrary to the form of the statutes of the United States in such case made and provided.

That on the tenth day of March, in the year of our Lord one thousand eight hundred seventy-four, the said Bernard Lariviere had and owned a large quantity of goods, packages, and peltries, which are fully and particularly described in the schedule hereto annexed, which were there in his possession at the said Crookston, in the said State and district, and in the said ceded country, and within the jurisdiction of this court, and that on the said last-mentioned day R. M. Pratt, who was then and there an Indian agent, duly appointed by the United States, having reason to suspect and having been informed that the said Bernard Lariviere had introduced into the aforesaid country, so ceded to the United States as aforesaid, certain spirituous liquors, in violation of the provisions of the said section twenty of the said act of Congress, as amended as aforesaid, searched and caused to be searched
18 the aforesaid stores, packages, and peltries, and the places of the
deposit of the said Bernard Lariviere then and there, which were then and there in the said ceded country as aforesaid, and in the said county and State, and that upon sea'ch the said spirituous liquors hereinbefore described were then and there found therein stored, packed, and mingled with and in the aforesaid goods, packages, peltries, and places of deposit, and so carried and introduced as aforesaid by the said Bernard Laraviere into the ceded country, contrary to the form of the statutes of the United States in such case made and provided. That the said R. M. Pratt, duly appointed Indian agent as aforesaid, then and there, in the said ceded country, ceded to the United States in and by

the treaty aforesaid, in the said county of Polk, and district aforesaid, within the jurisdiction of this court, and on land seized an took, and caused to be seized and taken, as forfeited, as such Indian agent, all of the said liquors and all of the said goods, packages, and peltries of the said Bernard Lariviere, so found and being in the said ceded country, which are hereinbefore mentioned, and which are fully and particularly
19 described in the schedule hereto annexed and made a part hereof,
and now holds possession of the same, at the said Crookston, in the said county of Polk, in the State and district aforesaid, in the said ceded country, and within the jurisdiction of this court, to be disposed of as the court shall direct.

Third. That the said Bernard Laraviere, a white person, late of the village of Crookston, in the county of Polk, in the district aforesaid, yeoman, heretofore, to wit, on the second day of February, in the year of our Lord one thousand eight hundred and seventy-four, in the county of Polk, in the State and district of Minnesota, and within the jurisdiction of this court, with force and arms, unlawfully did carry and introduce in and upon some vehicle, boat, or conveyance to the said attorney unknown, from some place and territory outside of the Indian country, into the Indian country, to wit, into that part thereof lying and being in the county of Polk, in the State and district aforesaid, certain spirituous liquors, to wit, forty-three gallons of whiskey, ten gallons of Iron Mountain whiskey, two gallons of cherry brandy, two gallons
20 of Jamaica rum, and twenty gallons of bitters, the said bitters being
then and there composed largely of alcohol, which said introduction of the said spirituous liquors into the Indian country as aforesaid was then and there not by order of the War Department of the United States, nor any officer duly authorized thereunto by the said War Department, and which said introduction of liquors was then and there in violation of the provisions of section twenty of the act of Congress entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved June thirtieth, in the year of our Lord one thousand eight hundred and thirty-four, as the same is amended by the act of Congress entitled "An act to amend an act entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,'" approved March fifteenth, in the year of our Lord one thousand eight hundred and sixty-four, and contrary to the form of the statute of the United States in such case made and provided. That on the tenth day of February, in the year of our
21 Lord one thousand eight hundred and seventy-four, the said Ber-
nard Lariviere had and owned a large quantity of goods, packages, and peltries, which are fully and particularly described in the schedule hereto annexed, which were then in his possession at the said Crookston, in the county of Polk, in the said State and district, and in the said Indian country, and within the jurisdiction of this court, and that on the said last-mentioned day R. M. Pratt, who was then and there an Indian agent, duly appointed by the United States, having reason to suspect and having been informed that the said Bernard Laraviere had introduced into the aforesaid Indian country certain spirituous liquors, in violation of the provisions of the said section twenty of the said act of Congress as amended, as aforesaid, searched and caused to be searched the aforesaid stores, packages, and peltries, and the places of deposit of the said Bernard Lariviere then and there, which were then and there in the said Indian country as aforesaid, and in the said county and State, and that upon such search the spirituous liquors hereinbefore described were then and there found therein stored, packed, and mingled with and

in the aforesaid goods, packages, peltries, and places of deposit
22 of said Bernard Laraviere, and so carried and introduced as aforesaid by the said Bernard Laraviere into the said Indian country, contrary to the form of the statutes of the United States in such case made and provided. That the said R. M. Pratt, duly appointed Indian agent as aforesaid, then and there, in the said Indian country, in the said county of Polk and district aforesaid, within the jurisdiction of this court, and on land, seized and took, and caused to be seized and taken, as forfeited, as such Indian agent, all of the said liquors and all of the said goods, packages, and peltries of the said Bernard Laraviere so found and being in the said Indian country, which are hereinbefore mentioned, and which are fully and particularly described in the schedule hereto annexed and made a part hereof, and now holds possession of the same at the said Crookston, in the said county of Polk, in the State and district aforesaid, in the said Indian country, and within the jurisdiction of this court, to be disposed of as the court shall direct.

23 That all and singular the premises are true, and that by reason thereof, and by force of the statutes in said case made and provided, the aforementioned goods, packages, and peltries, and liquors became and are and should be forfeited to the uses in the said statutes specified.

Wherefore, the attorney of the United States prays that all the said goods, packages, and peltries and liquors may be decreed and declared forfeited, and that due process to enforce the said forfeitures may issue against all of the said property, and to give notice to all persons concerned in interest to appear and show cause at the return-day of the process why the said forfeitures should not be decreed.

WILLIAM W. BILLSON,
Attorney of the United States for the District of Minnesota.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

Wm. W. Billson, of said district, being duly sworn, says that he is attorney for the United States in and for the said district; that he knows the contents of the foregoing libel or information, and that the
24 same, and each and every part thereof, is true to the best of his knowledge, information, and belief.

WM. W. BILLSON.

Subscribed & sworn to before me this 19th day of March, in the year of our Lord one thousand eight hundred & seventy-four.

I. N. CARDOZO,
U. S. Commr., Dist. Minn.

SCHEDULE.

Inventory of the goods, packages, and peltries of Bernard Laraviere, seized by R. M. Pratt, Indian agent, as set forth in foregoing libel, being the schedule in the said libel referred to:

11 pairs ladies' slippers.
19 " men's boots.
64 " men's shoes.
11 sacks shot, 25 lbs. each.
71 pairs shoes & slippers.
4 boxes cartridges, cal. No. 44.

¼ dozen felt hats.
⅛ " " "
2 black hats.
2½ dozen men's cotton socks.
2 pairs children's stockings.
3 children's hats.

Inventory of goods, &c.—Continued.

8 cards ladies' glass buttons.
1 box Indian paint.
20 cards shirt-buttons.
4 packs small envelopes.
7 " large "
63 boxes thread, (skein & spool.)
3 cards coat-buttons.
25 4 doz. pocket-mirrors.
½ doz pewter boxes.
2 doz. ladies' hose.
1 ream paper.
5 neck-ties.
4 dozen chalk-lines.
3 " boot-laces.
3 chalk-lines.
2½ doz. jew's-harps.
14 pairs ladies' woolen hose.
1 box fish-hooks.
8 pairs elastics.
½ doz. shaving-soap.
½ " white felt hats.
6 pairs ladies' elastics.
10 bottles mucilage.
19 wooden pipes.
1 doz. linen kerchiefs.
5 pairs gents' white shirts.
5 hair-brushes.
5 parlor sponge balls.
2 ladies' hair-nets.
9 gent.'s caps
11 pairs ladies' gauntlets.
9 silk ties.
4 linen kerchiefs.
21 boxes men's paper collars.
4 Cardigan jackets.
26 2 Cardigan jackets.
5 nubias.
1 doz. toilet-soap.
1 " pearl white.
10 pairs children's shoes.
1 box jewelry.
8 boys' scarfs.
5 children's knit scarfs.
4 pairs ladies' cloth gaiters.
6 gent.'s white shirts.
19 pairs gents.'s woolen socks.
3 " cotton socks.
5 " woolen shirts.
6 " knit drawers.
6 " ladies' cotton hose.
2 knit shirts.
5 cotton under-shirts.
1 gingham shirt.
2 men's scarfs.
4 boy's scarfs.
6 ladies' skirts.
2 small mirrors.
3 doz. pocket kerchiefs.
4 checked shawls.
11 ladies' single shawls.
2 children's summer hats.
5 ladies' hats.
2 crash towels.
2 coverlets.
27 29 towels.
17 yds. red flannel.
36 yds. red flannel.
19 " Moscow melton.
21 " white flannel.

1 large clock.
3 dozen chalk-lines.
5 black felt hats.
9 chip hats.
46 bolts ribbon
1 stick lace.
13 children's felt hats.
8 pairs men's cotton gloves.
6 pairs worsted gloves.
4 white pocket-kerchiefs.
2 large mirrors.
7 small "
3 pairs ladies' hose.
11 boxes paper collars.
5 pairs buck gloves.
7 " " mittens.
5 toy-watches.
2 pairs suspenders.
13 pairs men's buck gloves.
32 fish-lines.
7 bottles perfumery.
2 pairs canvass pants.
1 " knit mittens.
3 " linen pants.
17 mosquito-bars.
21 linen coats.
7 linen vests.
5 men's drilling frocks.
2 doz. gent's gingham shirts.
½ ladies' straw hats.
11 black chip hats.
5 white " "
3 woolen under-shirts.
6 pairs gent. cotton drawers.
5 " " " shirts.
2 pairs overalls.
2 " men's cotton drawers.
2 balmoral skirts.
4 pairs canvas overalls.
8 bustles.
10 gent'.s woolen shirts.
9 " " "
11 pairs gent.'s fancy slippers.
8 " men's cotton socks.
6 men's rubber overcoats.
3 woolen shirts.
10 pairs drawers.
2 " men's coarse boots.
7 " fine boots.
2 " coarse shoes.
4 flannel under-shirts.
2 pairs drawers.
44 yds. bleached cotton.
41 " white linen.
38 " cambric.
15 " cassimere.
45 " prints.
4 " "
27 " "
5 " "
38 " "
2½ " "
7 " "
27 " "
31 " "
11 " "
21 " "
3 " "
44 " "

Inventory of goods, &c.—Continued.

28 “ royal dress plaids.
6 “ Indian broadcloth.
10 “ drilling.
47 “ sheeting.
15 “ grey flannel.
16 “ “ “
2½ “ cassimere.
24 “ table-linen, (colored.)
39 “ dress-drilling.
50 “ check flannel.
20 “ bleached cotton.
5 “ linen.
20 “ muslin.
39 “ muslin.
13 “ factory cotton.
15 “ prints.
38 “ alpaca.
38 “ “
29 “ cambric.
37 “ dress-goods.
12 “ black cambric.
44 “ delaine.
49 yds. red alpaca.
28 13 “ white muslin.
15 “ “ “
60 yds. laces.
29 “ gingham.
27 “ “
31 “ “
5 “ lawn.
28 “ “
28 “ “
35 “ “
8 “ prints.
6 “ “
47 “ “
37 “ “
34 balls tape.
31 sticks braid.
21 “ “
2 bunches trimmings.
6 red face-powder.
1½ doz. pocket-combs.
1½ “ “ knives.
1 “ black lead-pencils.
2 boxes horn combs.
1 tobacco-pouch.
10 double blankets.
100 lamp-chimneys.
12 hoop-skirts.
18 tin cups.
29 14 tea-pots.
11 water-pails.
6 tin strainers.
5 dippers.
52 tin plates.
3 six-quart tin pails.
19 wash-dishes.
4 coffee-pots.
½ box clothes-pins.
3 nail-hammers.
4 hatchets.
2 drawing-knives.
1 bung-auger.
23 platters (11 small, 12 large.)
16 sauce-dishes.
6 small side-dishes.
72 pieces brown earthen ware.
10 large wash-bowls.
9 “ “
32 “ yellow cotton.
45 “ prints.
6 “ “
35 “ drab alpaca.
12 “ prints.
19 “ brown alpaca.
31 “ prints.
28 “ “
31 “ blue cotton.
40 “ prints.
16 “ “
20 “ “
19 “ “
31 “ “
10 large combs.
2 boxes hooks & eyes.
6 cards rubber cord.
1 stick elastic.
11 circular combs.
72 thimbles.
2 children’s rattles.
2 cards brass buttons.
5 calf pocket-books.
5 spools machine-silk.
2 boxes skein-silk.
3 doz. papers needles.
1 hair-brush.
½ doz. fine combs.
8 pieces toilet-soap.
½ doz. small penknives.
23 lbs. rifle-powder.
2 brush-brooms.
72 lbs. wrapping-paper.
31 pairs pants.
19 winter coats.
14 summer coats.
12 vests.
6 zinc wash-bowls.
10 single blankets.
2 rubber blankets.
8 window-sashes.
3 d’ble-barrel shot-guns.
1 Smith’s carbine.
1 needle-gun.
1 Springfield rifle.
1 Sharpe’s revolver.
14 side-dishes.
148 china plates.
21 platters (10 large, 11 small.)
2 glass syrup-cups.
3 glass cream-pitchers.
4 “ butter-dishes.
5 “ sauce-dishes.
3 “ sugar-bowls.
3 spoon-holders.
9 papers tacks.
4 nail-hammers.
5 brush-brooms.
½ gross stove-polish.
9 lamp-chimneys,
12 blacking-brushes.
2 scrubbing “
6 earthen jugs.
1 caster.
10 balls twine.
½ doz. glass sauce-dishes.
1 sugar-bowl.
2 spoon-holders (white glass.)

Inventory of goods, &c.—Continued.

6 water-pitchers.
4 sugar-bowls.
5 butter-stamps.
10 lbs. tapioca.
17 kerosene-lamps.
70 boxes shoe-blacking.
43 papers stove-polish.
105 tumblers.
33 bar-bottles.
4 Stoughton-bottles.
30 12 scythe-stones.
6 fine whetstones.
1 half inch auger.
48 lamp-wicks.
3 cork-wicks.
23 lbs. rifle-powder.
9 8-inch flat .
28 lbs. rifle-powder.
5 pairs butts & screws.
8 bottles pickles.
8 lbs. cream-tartar.
5 " mustard.
3 " nutmegs.
4½" cloves.
4 " ginger.
6 " red pepper.
6 " starch.
3 " salts.
4½" sulphur.
5 " senna.
16 " beads.
400 rifle-caps.
9 small cans baking-powder.
48 cans fruit.
138 " "
22 " condensed milk.
6 " fruit.
50 cans meats.
31 19 boxes sardines.
100 papers tacks.
22 bottles patent medicines.
4,900 boxes gun-caps.
6 doz. rat-traps.
17 lbs. 12-penny nails.
95 " 12-20 penny "
150 " nails.
108 lbs. crush' sugar, (gross w.)
36 " tea, (gross w.)
112 " pulverized sugar, (gross.)
142 " brown sugar, (gross.)
84 " maple-sugar.
¾ barrel salt.
93 lbs. dried apples, (gross.)
20 window-lights, 14 x 16.
2 reflectors.
12 hay-rakes.
11 hay-forks.
2 axe-helves.
4 shovels.
2 spades.
2 tin measures.
2 funnels.
1 watering-pot.
12 scythe-snaths.
2 scythe-blades.
12 lamp-shades.

22 lbs. lemon-sugar.
2 pewter lemonade-shakers.
68 cans fruit.
1 lb. rifle-powder.
39 lbs. saleratus.
7 pack's "Twin Bros." yeast-cakes.
12 tea-spoons.
10 door locks & knobs.
23 butcher-knives.
6 powder-flasks.
11 bottles castor-oil.
13 " hair-oil.
24 boxes pills.
2 bottles eye-water.
6 boxes Seidlitz powders.
12 papers corn-starch.
30 lbs. ground coffee, (choice Rio in cans.)
98 papers gelatine.
14 lbs. shot.
18 papers allspice.
13 bottles ink.
2 boxes fish-hooks.
47 lbs. tobacco.
7 lbs. fine-cut tobacco.
28 sacks salt.
15 lbs. lard.
2 coffee-mills.
1 box lamp-chimneys.
44 boxes axle-grease.
24 cans tomatoes.
23 " corn.
8 axes.
2 scythes.
18 boxes matches.
6 boxes washing-blue.
1 box toilet-soap.
38 lbs. ham.
15 bottles French mustard.
5 bottles Worcester' sauce.
16 " mixed bitters.
40 lbs. nails, (40-penny.)
90 " shingle-nails.
10 common plates.
2 Indian mats.
3 window-sashes.
1 peg-rasp.
1 cheese-box.
20 galls. bitters.
10 " vinegar.
10 " Iron Mountain whiskey.
2 " cherry brandy.
1½ " sherry.
1 " Bourbon whiskey.
2 " Jamaica rum.
4 " Bourbon whiskey.
5 " strawberry syrup.
7 " lemon syrup.
11 brooms.
3 pairs scissors.
47 lbs. rat fur.
53 " " "
55 " " "
57 " " "
33½ "skunk "
10 " " "
40 " " "

Inventory of goods, &c.—Continued.

32 1 tin platter
8 scythes.
7 spittoons.
7 chamber-pots.
2 earthern water-pitchers.
3 teapots.
23 bowls.
4 meat-plates.
51 lbs. rat fur.
52 " " "
49½ " " "
49 " " "
60 " bear & skunk "
127 " rat "
36 " " " in sacks.
42 " " " "
72 " " " "
3 wolf pelts
2 otter.
33 fox pelts
38 gallons Bourbon whiskey.
9 pairs boot packs.
1 sett Fairbanks' store-scales.

64 lbs. rat-fur.
52 " " "
55 " " "
53 " " "
63 " " "
53 " " "
52 " " "
73 " " "
51 " " "
60 " " "
69 " " "
68 " " "
122 " " "
122 " " "
76 " " " in sack.
26 " " " "
5 lynx pelts.
36 mink pelts.
61 weasel pelts.
6 bear & cub.
3 pair shoe packs.
2 bushels white beans.

WM. W. BILLSON,
U. S. Dist. Atty. for Minn.

33 Schedule referred to in annexed monition.
WM. A. SPENCER, *Clerk.*

Inventory of B. B. Larivere's stock.

11 pairs ladies' slippers.
19 " men's boots.
64 " men's shoes.
18 sacks shot, 25 lbs. each.
71 pairs shoes & slippers.
4 boxes cartridges, cal. No. 44.
8 cards ladies' glass buttons.
1 box Indian paint.
20 cards shirt-buttons.
4 packs small envelopes.
7 " large "
63 boxes thread, (skein & spools.)
3 cards coat-buttons.
4 doz. pocket-mirrors.
½ " pewter boxes.
2 " ladies' hose.
1 ream paper.
5 neck-ties.
4 doz. chalk-lines.
3 " boot-laces.
3 chalk-lines.
2½ doz. jew's-harps.
14 pairs ladies' woolen hose.
1 box fish-hooks.
34 7 pairs buck mittens.
5 toy.'s watches.
2 pairs suspenders.
13 " men's buck gloves.
32 fish-lines.
7 bottles perfumery.
6 pairs ladies' elastics.
10 bottles mucilage.
19 wooden pipes.

8 pairs elastics.
½ doz. shaving soap.
½ " white felt hats.
¼ " felt hats.
⅛ " " "
2 black hats.
2½ doz. men's cotton socks.
2 pairs children's stockings.
3 children's hats.
1 large clock.
3 doz. chalk-lines.
5 black felt hats.
9 chip hats.
46 bolts ribbon.
1 stick lace.
13 children's felt hats.
8 pairs men's cotton gloves.
6 " worsted gloves.
4 white pocket-kerchiefs.
2 large mirrors.
7 small "
3 pairs ladies' hose.
11 boxes paper collars.
5 pairs buck gloves.
4 pairs ladies' cloth gaiters.
6 gent.'s white shirts.
19 pairs gent.'s woolen socks.
3 " cotton socks.
5 " woolen mits.
6 " knit drawers.
6 " pairs ladies hose.
2 knit shirts.
5 cotton under-shirts.

Inventory of B. B. Larivere's stock—Continued.

1 doz. linen kerchiefs.
5 pairs gent.'s white shirts.
5 hair-brushes.
5 parlor sponge balls.
2 ladies hair-nets.
3 mosquito-nets.
9 gent.'s caps.
11 pairs ladies' gauntlets.
9 silk ties.
4 linen kerchiefs.
21 boxes men's paper collars.
4 Cardigan jackets.
2 " "
5 nubias.
1 doz. toilet-soap.
1 " pearl white.
10 pairs children's shoes.
1 box jewelery.
8 boys' scarfs.
35 5 children's knit scarfs.
9 gent's woolen shirts.
11 pairs gent.'s fancy slippers.
8 " men's cotton socks.
6 men's rubber overcoats.
3 hoop-skirts.
3 woolen shirts.
10 pairs drawers.
2 " men's coarse boots.
7 " " fine "
2 " " coarse shoes.
4 flannel undershirts.
2 pairs drawers.
1 gingham shirt.
2 men's scarfs.
4 boys' scarfs.
2 ladies' skirts.
2 small mirrors.
3 doz. pocket-kerchiefs.
4 checked shawls.
11 ladies' single shawls.
2 children's summer hats.
5 ladies' hats.
2 crash towels.
2 coverlets.
29 towels.
17 yds. red flannel.
36 yds. red flannel.
36 19 yds. Moscow melton.
21 " white flannel.
21 yds. prints.
3 " "
44 " "
9 " "
32 " yellow cotton.
45 " prints.
6 " "
35 " drab alpaca.
12 " prints.
19 " brown alpaca.
31 " prints.
28 " "
31 " blue cotton.
40 " prints.
16 " "
20 " "
19 " "
31 " "

2 pairs canvass pants.
1 " knit mittens.
3 " linen pants.
17 mosquito-bars.
21 linen coats.
7 " vests.
5 men's drilling frocks.
2 doz. gent.'s gingham shirts.
½ " ladies' straw hats.
11 black chip hats.
5 white " "
3 woolen under-shirts.
6 pairs gent.'s cotton drawers.
5 " " " shirts.
2 " overalls.
2 " men's cotton drawers.
2 balmoral skirts.
4 pairs canvas overalls.
8 bustles.
10 gent.'s woolen shirts.
28 yds. royal dress plaids.
6 " Indian broadcloth.
10 " drilling.
47 " sheeting.
15 " gray flannel.
16 " " "
2½ " cassimere.
24 " table-linen, (colored.)
39 " dress drilling.
50 " check flannel.
20 " bleached cotton.
5 " linen.
20 " muslin.
39 " muslin.
13 " factory cotton.
44 " bleached cotton.
41 " white linen.
38 " cambric.
15 " cassimere.
45 " prints.
4 " "
27 " "
5 " "
38 " "
2½ " "
7 " "
29 " "
31 yds. prints.
11 " "
29 " gingham.
27 " "
31 " "
5 " lawn.
28 " "
28 " "
35 " "
8 " prints.
6 " "
47 " "
37 " "
34 balls tape.
31 sticks braid.
21 " "
2 bunches trimmings.
6 red face-powder.
1½ doz. pocket-combs.
1½ " " knives.

Inventory of B. B. Larivere's stock—Continued.

15 " "
38 " alpaca.
38 " "
29 " cambric.
37 " dress goods.
12 " black cambric.
44 " delaine.
49 yds. red alpaca.
37 13 " white muslin.
15 " " "
60 yds. laces.
5 calf pocket-books.
5 spools machine-silk.
2 boxes skein-silk.
3 doz. papers needles.
1 hair-brush.
½ doz. fine combs.
8 pieces toilet-soap.
¾ doz. small penknives.
23 lbs. rifle-powder.
2 brush-brooms.
72 lbs. wrapping-paper.
31 pairs pants.
19 winter coats.
14 summer coats.
12 vests.
6 zinc wash-boards.
10 single blankets.
2 rubber blankets.
8 window-sashes.
3 d'ble-barrel shot-guns.
1 Smith's carbine.
1 needle-gun.
1 Springfield rifle.
1 Sharpe's revolver.
10 double blankets.
38 100 lamp-chimneys.
12 hoop-skirts.
18 tin cups.
14 teapots.
21 platters, (10 large, 11 small.)
2 glass syrup-cups.
3 " cream-pitchers.
4 " butter-dishes.
5 " sauce-dishes.
3 " sugar bowls.
3 spoon-holders.
9 papers tacks.
4 nail-hammers.
5 brush-brooms.
½ gross stove-polish.
9 lamp-chimneys.
12 blacking-brushes.
2 scrubbing "
6 earthern jugs
1 caster.
10 balls twine.
½ doz. glass sauce-dishes.
1 sugar-bowl.
2 spoon-holders, (white glass.)
22 lbs. lemon-sugar.
2 pewter lemonade-shakers.
68 cans fruit.
1 lb. rifle-powder.
39 39 lbs. saleratus.
7 packs "Twin Bros." yeast-powders.
12 tea-spoons.

1 " black lead-pencils.
2 boxes horn combs.
1 tobacco-pouch.
10 large combs.
2 boxes hooks & eyes.
6 cards rubber cords.
1 stick elastic.
11 circular combs.
72 thimbles.
2 children's rattles.
2 cards brass buttons.
11 water-pails.
6 tin strainers.
5 dippers.
52 tin plates.
3 six-quart tin pans.
19 wash-dishes.
4 coffee-pots.
¾ box clothes-pins.
3 nail-hammers.
4 hatchets.
2 drawing-knives.
1 bung-auger.
23 platters, (11 small and 12 large.)
16 sauce-dishes.
6 small side-dishes.
72 pieces brown earthernware,
10 large wash-bowls.
6 water-pitchers.
4 sugar-bowls.
5 butter-stamps.
10 lbs. tapioca.
17 kerosene-lamps.
70 boxes shoe-blacking.
43 papers stove-polish.
105 tumblers.
33 bar bottles.
4 Stoughton bottles.
14 side-dishes.
148 china plates.
6 powder-flasks.
12 scythe-stones.
6 fine whetstones.
1 half-inch auger.
48 lamp-wicks.
3 cork-wicks.
23 lbs. rifle-powder.
9 8-inch flat files.
28 lbs. rifle-powder.
5 pairs butts & screws.
8 bottles pickles.
2 lbs. cream-tartar.
5 " mustard.
3 " nutmegs.
4½ " cloves.
4 " ginger.
6 " red pepper.
6 " starch.
3 " salts.
4½ " sulphur.
5 " senna.
16 " beads.
400 rifle-caps.
9 small cans baking-powder
48 cans fruit.
138 " "
22 " condensed milk.
6 " fruit.

Inventory of B. B. Larivere's stock—Continued.

10 door locks and knobs.
23 butcher-knives.
19 boxes sardines.
100 papers tacks.
22 bottles patent medicines.
4900 boxes gun-caps.
11 bottles castor oil.
13 " hair "
24 boxes pills.
2 bottles eye-water.
6 boxes Seidlitz powders.
12 papers corn-starch.
30 lbs. ground coffee, (choice Rio in cans.)
98 papers gelatine.
48 lbs. shot.
18 papers allspice.
13 bottles ink.
2 boxes fish-hooks.
47 lbs. tobacco.
7 " fine-cut tobacco.
28 sacks salt.
15 lbs. lard.
2 coffee-mills.
1 box lamp-chimneys.
44 boxes axle-grease.
40 24 cans tomatoes.
23 " corn.
8 axes.
2 scythes
18 boxes matches.
6 " washing-blue
2 scythe-blades.
12 lamp-shades.
1 tin platter.
8 scythes.
7 spittoons.
7 chamber-pots.
2 earthen water-pitchers
3 tea-pots.
23 bowls.
4 meat-plates.
10 common "
2 Indian mats.
3 window-sashes
1 peg-rasp.
1 cheese-box.
20 gals. bitters.
10 " vinegar.
10 " Iron Mountain whiskey.
2 " cherry brandy.
1½ " sherry.
1 " Bourbon whiskey.
2 gals. Jamaica rum.
41 4 galls. Bourbon whiskey.
5 " strawberry syrup.
7 " lemon syrup.
11 brooms.
3 pairs scissors.
47 lbs. rat fur.
53 " " "
72 " " " in sacks.
5 lynx pelts.
3 wolf "
36 mink "
2 otter "
61 weasels "
50 " meat.
1 box toilet-soap.
38 lbs. ham.
15 bottles French mustard.
5 " Worcester' sauce.
16 " mixed bitters.
40 lbs. nails, 40-penny.
90 lbs. shingle-nails.
6 doz. rat-traps.
70 lbs. 12-penny nails.
90 " 20 " "
150 " nails.
108 " crush' sugar, (gross wt.)
36 " tea, "
112 " pulverized sugar "
142 " brown " "
84 " maple "
¾ barrel salt.
93 lbs. dried apples, (gross.)
20 window-lights, 14x16.
2 reflectors.
12 hay-rakes.
11 " forks.
2 axe-helves.
4 shovels.
2 spades.
2 tin measures.
2 funnels.
1 watering-pot.
12 scythe-snaths.
55 lbs. rat fur.
57 " " "
33½ " skunk "
10 " " "
40 " " "
64 " rat "
52 " " "
55 " " "
53 " " "
63 " " "
53 " " "
52 " " "
73 " " "
51 " " "
51 " " "
52 " " "
60 " " "
49½ " " "
69 " " "
49 " " "
68 " " "
60 " bear & skunk fur.
33 fox-pelts.
6 bear and cub.
38 galls. Bourbon whiskey.
3 pairs shoe-packs.
9 " boot "
2 bushels white beans.
1 sett Fairbanks' store-scales.
122 lbs. rat fur.
127 " " "
122 " " "
36 " " " in sacks.
76 " " " "
42 " " " "
26 " " " "

42 UNITED STATES OF AMERICA,
District of Minnesota, ss:

The President of the United States of America to the marshal of the district of Minnesota, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Minnesota, on the 19th day of March, 1874, by William W. Billson, esqr., attorney of the United States for the said district, in behalf of the United States of America, against certain goods, wares, and merchandize lately in the possession of Bernard Lariviere, of the village of Crookston, in the county of Polk, in said district, more particularly described in the annexed schedule, for reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said goods, wares, and merchandize may be cited, in general and special, to answer the premises, and, all due proceedings being had, that the said goods, wares, and merchandize may, for the causes in the said libel mentioned, be condemned and the 43 proceeds thereof distributed according to law. You are therefore hereby commanded to attach the said goods, wares, and merchandize, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed according to the prayer of said libel, that they be and appear before the said court, to be held in and for the district of Minnesota, at St. Paul, on the 1st Monday of May, A. D. 1874, at 11 o'clock in the forenoon of that day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and make their allegations in that behalf.

And what you shall have done in the premises do you there and then make return thereof, together with this writ.

Witness the Hon. Rensselaer R. Nelson, judge of the said court, at St. Paul, in the district of Minnesota, this 19th day of March, A. D. 1874.

[SEAL.] W. A. SPENCER, *Clerk.*

WM. W. BILLSON,
U. S. Dist. Atty.

44 DIST. OF MINNESOTA, *ss:*

In obedience to the within writ, I did on the 1st day of April, 1874, at Crookston, in my dist., seize and attach the within-mentioned property, and now have the same in my custody and possession, and I have duly cited all persons to appear and assert their claims, as I am within commanded.

St. Paul, April 6, 1874.

R. N. McLAREN,
U. S. Marshal,
By GEO. W. BAKER,
Dep'y.

(Indorsed:) U. S. district court, district of Minnesota. The United States vs. Thirty-three Fox Pelts and other property. Monition. Filed April 11, 1874. Wm. A. Spencer, clerk. Wm. W. Billson, U. S. dist. atty.

Ordered that marshal's notice on the within writ be published in the St. Paul Daily Press.

March 26, '74.

R. R. NELSON,
Judge.

45 *Affidavit of publication.*

STATE OF MINNESOTA,
County of Ramsey, ss:

Frederick Driscoll, being duly sworn, deposes and says that the annexed printed copy of marshal's notice of seizure was taken from the St. Paul Daily Press, a newspaper which, during the whole time of publication of said notice hereinafter stated, has been and is printed and published in the city of Saint Paul, county of Ramsey, and State of Minnesota. That the said notice was published in said newspaper for the period of fourteen consecutive days, commencing on the 27th day of March, 1874, upon which day last mentioned it was first published, and ending on the 11th day of April, 1874, on which day last mentioned it was last published, upon which days or times of publication aforesaid the said newspaper was regularly published, and that during the whole time of the said publication he was one of the printers & publishers of the said newspaper.

FREDERICK DRISCOLL.

Subscribed and sworn to before me this second day of May, A. D. 1874.

Printers' fee, $24.
[NOTARY SEAL.]

J. MEESE,
Notary Public, Ramsey County, Minn.

Marshal's notice of seizure.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

Whereas a *il*bel of information hath been filed in the district court of the United States for the district of Minnesota, on the 19th day of March, 1874, by William W. Billson, esquire, United States attorney, in behalf of the United States of America, against 43 gallons of whisky, ten gallons of Iron Mountain whisky, 2 gallons of cherry brandy, 2 gallons of Jamaica rum, and 20 gallons of bitters, the said bitters being then and there composed mainly of alcohol; together with a large quantity of goods, packages, and peltries, fully and particularly described in the schedule to said libel attached and on file in the clerk's office of said court, stating that the same were on the 10th day of March, 1874, by R. W. Pratt, esquire, as Indian agent, duly appointed by the United States, seized as forfeited to the use of the United States, and further stating and alleging that the said forfeiture was incurred by reason of, that Barnard Lariviere, a white person, late of the village of Crookston, in the county of Polk, in the district aforesaid, yeoman, heretofore, to wit, on the 2d day of February, 1874, with force and arms, unlawfully did carry and introduce in and upon some vehicle, boat, or conveyance, from some place outside of the Indian country into the country ceded to the United States by the Red Lake and Pembina bands of Chippewa Indians in and by the treaty between the United States and the said bands of Chippewa Indians made and concluded in Minnesota on the 2d day of October, in the year 1863, and proclaimed by the President of the United States on the 5th day of May, 1864, certain spirituous liquors, which said introduction of spirituous liquors was then and there in violation of the provisions of section 20 of the act of Congress entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved June 30th, 1834, as amended by the act of Congress entitled "An act to amend an act entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,'" approved March 15th, 1864, and for other reasons, as will more fully appear by reference to the said libel of information on file with the clerk of said court, and praying the usual process and monition of the said court, that all persons interested in the said property in said libel described may *may* be cited to answer the pri*m*'ses, and all due proceedings being had, that said goods, wares, and merchandize may, for the causes in the said libel mentioned, be condemned and the proceeds thereof distributed according to law.

Therefore, in pursuance of a monition under the seal of the said court to me directed and delivered, I do hereby give notice unto all persons generally having or pretending to have any right, title, or interest therein, to appear before the aforesaid court in the city of Saint Paul, on the first Monday in May, 1874, at 11 o'clock in the forenoon of said day, if the same shall be a day of jurisdiction, otherwise on the next day of juristion thereafter, to interpose a claim for the same and to make their allegations in that behalf.

Dated at St. Paul, this 27th day of March, 1874.

R. N. McLAREN,
U. S. Marshal.
WM. W. BILLSON,
U. S. Attorney.

m27-14t.

46 (Indorsed:) U. S. district court, district of Minnesota. The United States vs. 43 Gallons of Whiskey, &c. Affidavit of publication of notice. Filed May 4, 1874. Wm. A. Spencer, clerk.

47 In the district court of the United States for the district of Minnesota.

THE UNITED STATES
vs.
FORTY-THREE GALLONS OF WHISKEY AND other property.

And now comes Bernard Lariviere, by his attorneys, Davis, O'Brien & Wilson, and makes claim as absolute owner of all the property described in the information herein, and excepts to the sufficiency of the information filed herein, both as to the form and substance thereof, and demurs thereto, and assigns the following grounds of exception and demurrer:

First. For that it appears from the said information that the court has no jurisdiction in the premises.

Second. That it appears from the said information that the property thereby proceeded against was never introduced, nor did any person therein or intend to introduce the same, into any Indian country.

Third. That it affirmatively appears from said information that the said property was searched and seized at Crookston, in the county of Polk, in the State of Minnesota, the same being an organized 48 county, and the said Crookston not being in or adjoined to or near any Indian country.

Fourth. That it affirmatively appears from said information that the seizure made herein was without any authority of law.

Fifth. Because of other manifold insufficiencies apparent upon the face of the said information, and because the same does not state facts sufficient to constitute a cause of action or forfeiture against said property.

Whereupon he prays judgment that this action may be dismissed, and that the said property may be restored to him, and that the name of the person claiming the moiety herein, as informer or otherwise, may be ascertained by the court and inscribed in the record herein, and that this claimant may have judgment against such person for his costs and disbursements.

DAVIS, O'BRIEN & WILSON,
Attys. for Bernard Lariviere.

49 (Indorsed:) U. S. dist. court, dist. of Minnesota. The United States vs. Forty-three Gallons of Whiskey and other property. Exceptions to libel. Filed April 20, 1874. Wm. A. Spencer, clerk. Davis, O'Brien & Wilson, attys. for Bernard Lariviere, St. Paul.

50 In the district court of the United States, district of Minnesota.

THE UNITED STATES
vs.
FORTY-THREE GALLONS OF WHISKEY AND other property.

And now comes Charles Grant, and asks to be made a party to this suit, and makes claim to and avers that he is the absolute owner of an equal and undivided one-half part of the following-described furs and peltries and goods seized and described in this suit, and sought to be condemned for violation of the laws and treaties of the United States, to wit, 9,600 rat skins, and two hundred and twenty-two rat skins, 97 mink skins, 310 skunk skins, 29 red-fox skins, 4 bear skins, 1 fisher skin, 2 otter skins, 2 lynx skins, 10 badger skins, and 4 coon skins, and five wolf skins, of value of $4,000, and says that he, the claimant, is not named in said libel as a party to said suit, nor is it anywhere therein alleged that this claimant has been or is guilty of any violation of any law or treaty of the United States, or done any act by which his said property and 51 goods are forfeited, or have become or are forfeited, or are the subject-matter of seizure and condemnation; and all this he is ready to verify. Wherefore he prays that his said property may be released from said seizure and restored to him, and for which he prays judgment, &c.

And for the plea and answer to each count in said libel he says that it appears from the said information and libel that the said goods were seized within the jurisdiction of the State of Minnesota, and not on lands within any Indian country, or in any country exclusively under the jurisdiction of the United States; nor is it anywhere stated that said property belonged to any Indian trader, or that any liquors were sold to any Indian under the control of any Indian agent by the owners of said goods so seized, or that any trade was carried on, or attempted to be carried on, with Indians by the persons named in said libel, or that the places searched were places for such trade, or places of legal under said search; nor is it averred that said goods were introduced for the purpose of being sold, traded, or given to any Indians.

52 Wherefore defendant says that no forfeiture of said goods has occurred by reason of any facts stated in said several courts, and that said goods were seized without authority of law, and not in places where the law allowed the same to be seized, nor were said goods made seizable by said law or treaty, nor were said goods of this defendant the subject of the restraint of said United States, as to where he might carry the same, or how he might use the same, and were owned by this defendant without reference to any trade had or contemplated with Indians, or in violation of any law of Congress or treaties of the United States.

Wherefore he prays judgment.

CHARLES GRANT,
By W. A. GORMAN,
And associated with him W. W. McCARTY.

53 (Indorsed:) U. S. dist. court, district of Minnesota. United States vs. Forty-three Gallons of Whiskey and other property. Claim of title and exceptions to libel. Filed April 24, 1874. Wm. A. Spencer, clerk. Gorman, att'y for Grant; McCarty.

54 United States district court, Minnesota district, May, 1874.

UNITED STATES
v.
43 GALLONS OF WHISKY, PELTRIES, &c., BERNARD Larviere and Chas. Grant, claimants.

The United States has filed a libel of information against 43 gallons of whisky, sundry peltries, and other goods and merchandise, seized as forfeited by virtue of the 20th section of the act of Congress approved June 30, 1834, as amended by the act passed February 13, 1862, which, it is claimed, is now in force over the territory where this seizure was made.

There are three special counts in the libel. The first, in substance, sets forth that on Feb. 12, 1872, Bernard Lariviere, a white person, of the village of Crookston, in the county of Polk and State of Minnesota, did unlawfully carry and introduce into said village, which is located upon the territory ceded to the United States by treaty with the Red Lake and Pembina bands of Chippewa Indians, made and concluded Oct. 3, 1863, the spirituous liquors particularly described, contrary to the treaty and the act of Congress above cited; that an Indian agent, duly appointed, having reason to suspect, and being informed, that spirituous liquors had been introduced by said Lariviere into said county of Polk in violation of the act of Congress, searched and caused to be searched the goods, merchandise, peltries, &c., which he had in his possession at Crookston, in the ceded territory aforesaid; upon which search the whisky was found stored, packed, and mingled with and in the packages, goods, and peltries, and in the places of deposit of said Laraviere, and was so carried and introduced into the ceded territory contrary to the form of statute of the United States in such case made and provided, and was seized and taken by the Indian agent as forfeited, together with all the goods and peltries, &c., so found.

The second count sets forth that the whisky was introduced with the intent to sell, dispose of, and distribute the same to and among the bands and tribes of Chippewa Indians under the charge *charge* of an Indian agent, who frequented the village *or* Crookston, and who lived upon a reservation near that place. The 3d count is abandoned.

The information prays that the said goods, merchandise, peltries, &c., may be decreed and declared forfeited, and the forfeiture properly enforced.

Lariviere and Grant have filed claims to the property, and exceptions to the information, and demur thereto.

The exceptions and demurrer interposed have been fully argued.

Wm. W. Billson, U. S. atty. for Govt.; Davis, O'Brien & Wilson, for Lariviere; W. M. McCarty, for Grant.

NELSON, J.:

It is necessary, to a proper understanding of this controversy, to examine the act of Congress admitting the State of Minnesota into the Union, the 20th section of the act of June 30, 1834, as amended in 1862, and the 7th article of the treaty of 1863, under which, it is claimed, this proceeding is properly instituted.

The State of Minnesota was admitted into the Union May 11, 1858, and the locus in quo is within the boundaries prescribed by the act of Congress authorizing a State government. The first section of the act declares: "That the State of Minnesota shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original State' in all respects whatever." There is no proviso or limitation in the act with reference to the jurisdiction of the State over any portion of the territory occupied by the Indian tribes within the boundaries presc'ibed by Congress, and the constitution of the State nowhere intimates that this territory is withdrawn from its general jurisdiction.

If the jurisdiction of this court in this proceeding can be sustained, the fact being undisputed that the introduction of whisky was upon the ceded land, it must exist by virtue of the treaty made with the Chippewa bands of Indians in 1863. The 7th article is as follows: "The, laws of the United States now in force, or that may hereafter be enacted, prohibiting the introduction and sale of spirituous liquors in the Indian country, shall be in full force and effect throughout the country hereby ceded, until otherwise directed by Congress or the President of the United States."

The only law prohibiting the introduction of spirituous liquors contemplated by this treaty is found in the 2d section of the "trade and intercourse" act of 1834, as amended Feb. 13, 1862, viz: "* * * and if any Indian agent * * * has reason to suspect, or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor * * * into the Indian country, * * * it shall be lawful for such agent * * * to cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched, and if any liquor is found therein, the same, together with the teams, &c., conveying the same, and the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court and forfeited, &c."

The only defence under the statute to the charge is the introduction by order of the War Department or some authorized officer.

The county of Polk is a portion of the territory ceded by this treaty, and has been organized for many years, and all the civil officers recognized by the constitution and laws of the State of Minnesota are residing therein, and in the exercise of their full power and authority. The white settlements are increasing and towns and villages are springing up with wonderful rapidity. Already a railroad authorized by the State and endowed by its bounty traverses the entire county, and the village of Crookston, where this merchandise was seized, is one of the stations. The trade and traffic in that part of the State, although sparsely inhabited, is quite large, and the wants of a frontier settlement are supplied by the merchants living in the village.

The question, therefore, involved in this case is one of no ordinary importance to the people of this State, and particularly the settlers in Polk County. The ultimate decision must depend upon the extent of the power of the Federal Government, through the Executive and Senate, to restrict by treaty stipulations with the Indian tribes in our midst the political and sovereign rights of this State. Until the act of Congress of 1871 (U. S. Stat. at Large, vol. 16, page 566) the power of the Government to make treaties with the Indian tribes residing within the limits of a State has never been questioned, and I will dismiss this part of the case by simply saying, that, in my opinion, treaties with the tribes and bands of Indians in our State, by which cessions of wild and uncultivated but arable land are secured to civilization and settlement, were the fulfillment of implied obligations on the part of the United States to this State when it was admitted into the Union on an equality with the original States. The authority to make treaties, and the subjects embraced therein, must have some limit. This power cannot be exercised to override other parts of the Federal Constitution, or to overturn the fundamental principles of our Government. True the Constitution of the United States declares a treaty to be the supreme law of the land, but it has no greater force or effect than a legislative enactment, and may even be annulled by a subsequent act of Congress, provided the subject-matter be within the legislative power of the latter, (2d Curt., page 454.) It is conceded that treaties with the Indian tribes, although "domestic dependent nations," are of equal vitality with those with foreign nations, so far as the treaty-making power acts within the constitutional limits. But it is important to understand, in this connection, that the rights of the Indians, the power of the Federal Constitution over them and over their property, and the stipulations in the various treaties with them, have never been recognized in the constitution of this State or the act of Congress admitting it; so that at the time this treaty was concluded the jurisdiction of the State over all the territory occupied by the Indians was undoubted, except so far as the regulation of commerce with them might give Congress control.

It is claimed that the acts of Congress above referred to, with the assent of the State to the conditions imposed by the Federal Government, constitute a compact of guaranty, and limit the power of the United States to treat with the Indian tribes within the boundaries of the State, which would forbid the insertion of a stipulation in a treaty diminishing in any manner the sovereignty of the State without its consent.

This treaty of 1863 ceded a large tract of land within the boundaries of the State of Minnesota and the Territory of Dakota. So far as the seventh article attempts to interfere with the internal and domestic commerce of the State of Minnesota, or abridge the rights of its citizens, or withdraw its jurisdiction without its assent over the tract of land ceded, it is certainly an interference with the sovereignty of the State. The laws creating courts of justice for the protection of the liberty and property of its citizens would be thereby obstructed to the extent that the laws of the United States recognized by this treaty may operate upon them.

If the jurisdiction of the Federal courts to enforce the penalties and forfeitures accruing under the law forbidding the introduction of spirituous liquor is once admitted, it necessarily excludes the jurisdiction of the State courts, and all the police laws, and others recognizing the traffic in the interdicted article.

It cannot admit of doubt that under such circumstances Minnesota would not stand "upon an equal footing with the original States."

The Federal Government in the treaty with Great Britain, where the contract settled a disputed boundary question, would not undertake to divest any State of territory over which it claimed to exercise jurisdiction without procuring the assent of the State in advance, or making the validity of a particular stipulation conditional upon future favorable legislation by the State interested. (See "Ashburton Treaty," U. S. Stat. at Large, vol. 8, p. 554; Lawrence's Wheaton on International Law, pp. 493, 494, and 876, and notes.)

It has been urged by some writers that the acquisition of foreign territory under the treaty-making power of the United States necessarily concedes that of alienating territory and abridging State sovereignty; but the correspondence of the commissioners and the final conclusion in the above treaty would seem to deny the power to alienate without the consent of the State interested. The treaties cited by the U. S. attorney all relate to the status of foreigners residing within the United States, or to their property. There can be no doubt about the power of the Government by treaty to protect the person and property of foreigners, and remove them from the operation of a particular law of a State passed for the special purpose of reaching them. So in the case of tribes of Indians, their persons and property could have been protected by treaty stipulations, although within the limits of a State, any law of the State to the contrary. To make such stipulations is within the power of the Government under the Constitution, for upon Congress is conferred the regulation of commerce with foreign nations and with the Indian tribes; and the general treaty-making power could properly contract with reference to these subjects. But to say that a barbarous semi-sovereign community under the protectorate of the United States, and within its geographical limits, can by treaty stipulate away any part of the sovereignty of a State guaranteed by the supreme Federal Government on its admission into the Union, is, in my opinion, inconsistent with the nature of our Government.

I have arrived at the conclusion, therefore, that until the assent of the State of Minnesota is obtained, the 7th article of the treaty of 1863 is inoperative, to the extent of demanding a forfeiture of the spirituous liquor and other merchandise for any act charged to have been committed by the person named in the libel.

The exceptions and demurrer are sustained and the property must be restored.

(See U. S. v. Ward, 1 Woodworth's Rep., page 1; U. S. v. Yellow Sun, 1 Dillon, page 275; 1 McLean, 234; Kansas Indians, 5; Wallace, page 737, and cases cited.)

55 (Indorsed:) U. S. district court, dist. of Minnesota. United States vs. 43 Gallons of Whiskey, peltries, &c. Opinion of court on exceptions to libel. Filed May 4, 1874. Wm. A. Spencer, clerk.

56 In the district court of the United States, district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
FORTY-THREE GALLONS OF WHISKEY AND OTHER property, Bernard Lariviere and Charles Grant, claimants.

This action came on to be heard upon the information filed herein, and upon the demurrer and exceptions interposed by the claimants thereto, and was argued by counsel and submitted.

And the court, being now fully advised in the premises, doth hereby order, adjudge, and decree that the said demurrer and exceptions be, and they are hereby, sustained, and that this action be, and it is hereby, dismissed.

And it is further ordered and adjudged that the property so proceeded against, and all and singular the same, be, and it is hereby, restored to Bernard Lariviere, claimant, from whose possession the same was taken.

By the court.

Dated May 7, 1874.

R. R. NELSON, *Judge.*

57 A stay of proceedings is granted for ten days to the United States in which to take a writ of error, which is hereby allowed.

R. R. NELSON, *Judge.*

(Indorsed:) U. S. dist. court, district of Minnesota. The United States vs. Forty-three Gallons of Whiskey and other property. Judgment & decree. Filed May 7, 1874. Wm. A. Spencer, clerk.

58 United States district court for the district of Minnesota, ss:

I, William A. Spencer, clerk of said court, do hereby certify and return to the honorable the circuit court of the United States of America for the district of Minnesota that the foregoing is a true and complete transcript of the records, pleadings, proofs, orders, final decree, and all other proceedings in said cause, as appears from the original files and records of said district court; and I further certify and return that the original citation and writ of error are hereto annexed and herewith returned.

{SEAL OF U. S. DIST. COURT.} In witness whereof I have hereunto set my hand and affixed the seal of said court at St. Paul, in said district, this 1st day of June, A. D. 1874.

WM. A. SPENCER, *Clerk.*

59 (Indorsed:) U. S. circuit court, dist. of Minnesota. The United States vs. Thirty-three Fox Pelts and other property. Return from district court on appeal. Filed June 12, 1874. H. E. Mann, clerk.

60 United States circuit court, district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
33 FOX PELTS, 43 GALS. OF WHISKEY, & OTHER property.

It is hereby stipulated, for the purposes of the bonding by claimant of the property seized and held as forfeited in this cause, that the value thereof is five thousand two hundred and ninety-two dollars and twenty-eight cents.

Dated St. Paul, May 21, 1874.

DAVIS, O'BRIEN & WILSON,
Proctors for Claimant Lariviere.
WM. W. BILLSON, *U. S. Atty.*

61 (Indorsed:) U. S. circuit court, district of Minnesota. United States of America vs. 33 Fox Pelts, 43 gals. whiskey, & other property. Stipulation of value of property. Filed May 21, 1873. H. E. Mann, clerk.

62 Circuit court of the United States, district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
THIRTY-THREE FOX PELTS, FORTY-THREE GALLONS of whiskey, and other property.

Know all men by these presents that we, Bernard Lariviere, Bruno Beaupre, and Charles Sheffer, all of the district aforesaid, are held and firmly bound unto the United States of America in the sum of seven thousand dollars, lawful money of the United States, to be paid unto the said United States of America, for which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, firmly by these presents, sealed with our seals, dated and signed by us this 21st day of May, A. D. 1874.

The condition of this bond is such, that whereas on the 19th day of March, A. D. 1874, Wm. W. Billson, esq., the United States district attorney for the district of Minnesota, on behalf of the said United States, filed in the district court of the United States in and for the district of Minnesota a libel or libel of information against thirty-three fox pelts, forty-three gallons of whisky, and other personal property, fully described in the schedule to said libel annexed, in the possession
63 of Bernard Lariviere, at the village of Crookston, in said district, and claimed a forfeiture of the said property to the United States upon the grounds and reasons stated in said libel, to which reference is hereby made; and whereas the said property is now in the hands of the marshal of the said district under the process issued in pursuance of the prayer of the said libel; and whereas the said cause and proceeding (final decree of restitution having been made therein by said district court) has been removed to the circuit court of the United States for the eighth circuit, in and for said district, by writ of error issued therefrom and directed to the said district court; and whereas the value of the said personal property, as appears by the appraisement and stipulation now on file in the said circuit court, is five thousand two hundred and ninety-two and $\frac{28}{100}$ dollars; and whereas the said Bernard Lariviere, one of the claimants of the said property, and the person from whose custody and possession the said property was taken under the process aforesaid, has asked the return of the goods so seized upon the execution and delivery of this bond:

Now, therefore, the condition of this obligation is such, that in case the said property so seized shall by the sentence, decree, or judgment of the said district court or of the said circuit court, or other appellate court having cognizance of the said cause, be condemned as forfeited,

if the said Bernard Lariviere, Bruno Beaupre, and Charles
64 Scheffer, or either of them, or their heirs, executors, or administrators of them, or either of them, shall thereupon pay into the said court the sum of five thousand two hundred and ninety-two & $\frac{28}{100}$ dollars, and abide by and pay the money awarded against said claimant Lariviere by the final decree rendered by this court or other court having cognizance of said cause, then this obligation to be void; otherwise to remain in full force and virtue.

BURNARD B. LARIVIERE, [SEAL.]
By DAVIS, O'BRIEN & WILSON. [SEAL.]
BRUNO BEAUPRE. [SEAL.]
CHARLES SCHEFFER. [SEAL.]

STATE OF MINNESOTA,
County of Ramsey, *ss:*

Bruno Beaupre and Charles Scheffer, above named, of said county, being duly and severally sworn, deposes and says, each for himself, that he is a resident and freeholder of said State and district of Minnesota, and is worth the sum of seven thousand dollars over and above his debts and liabilities and property exempt from execution.

CHARLES SCHEFFER.
BRUNO BEAUPRE.

Subscribed and sworn to before me this 21st day of May, A. D. 1874.

WM. A. SPENCER,
U. S. Commissioner, &c.

65 (Indorsed:) United States circuit court, district of Minnesota. The United States vs. 33 Fox Pelts, 43 gallons of whiskey, & other property. Bond for return of property.

I hereby approve the form of the within bond.
May 21, '74.

WM. W. BILLSON,
U. S. Atty.

Filed May 22, 1874. H. E. Mann, clerk.

I hereby approve the within stipulation, and order the property to be delivered to Lariviere upon the filing of this stipulation in the clerk's office.

R. R. NELSON, *Judge.*

66 In the United States circuit court, district of Minnesota.

THE UNITED STATES OF AMERICA, PLFF. IN error,
vs.
THIRTY-THREE FOX PELTS, FORTY-THREE GALLONS of whisky, and other property, whereof Bernard Lariviere and Charles Grant are claimants, defts. in error.

Of the June term, in the year of our Lord one thousand eight hundred and seventy-four.

Afterwards, to wit, on the third Monday of June, in this same term, before the judges of the said court, at the city of St. Paul, in the said district, comes the said United States, by Wm. W. Billson, its attorney, and says that in the record and proceeding aforesaid there is manifest error in this, to wit:

In that the district court of the United States for said district erred in sustaining the demurrer and exceptions interposed by the said Bernard Lariviere and Charles Grant to the libel filed by the said United States herein, and the said United States prays that the decree in the proceedings aforesaid may be reversed, annulled, and altogether held for naught, and that the said United States, plaintiff in error, may 67 be restored to all things which it hath lost by occasion of the said decree.

WM. W. BILLSON,
U. S. Attorney for Minnesota.

(Indorsed:) United States circuit court, district of Minnesota. The United States vs. 33 Fox Pelts, &c. Assignment of errors. Filed June 15, 1874. H. E. Mann, clerk.

68 UNITED STATES OF AMERICA, *ss:*

To Bernard Lariviere and Charles Grant, greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and district of Minnesota, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Rensselaer R. Nelson, United States district judge in and for said district of Minnesota, one of the judges of the circuit court of the United States in and for the said eighth circuit and district of Minnesota, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy-four.

R. R. NELSON, *Judge.*

69 DISTRICT OF MINNESOTA, *ss:*

Averill L. Hyde, of said district, being duly sworn, says that at the city of Saint Paul, in said district, on Tuesday, the 30th day of June, A. D. 1874, he served the within citation personally upon Davis, O'Brien & Wilson, attorneys of Bernard Lariviere, therein mentioned, and upon W. A. Gorman, attorney of the said Charles Grant, by handing or leaving with the said Davis, O'Brien & Wilson and the said W. A. Gorman, at the time & place aforesaid, true & correct copies thereof.

A. L. HYDE.

Subscribed and sworn to before me this 30th day of June, A. D. 1874.

I. N. CARDOZO,
U. S. Commiss., Dist. Minn.

70 (Indorsed:) U. S. C. court. The United States of America, plff. in error, vs. 33 Fox Pelts & other property. Bernard Lariviere and Charles Grant, defts. in error. Citation. Filed July 2, 1874. H. E. Mann, clk.

Service of the within citation hereby admitted this 30th of June, A. D. 1874.

DAVIS, O'BRIEN & WILSON,
Attys. for Lariviere.
W. A. GORMAN,
Per J. J. W., *Atty. for Grant.*
WM. W. BILLSON, *U. S. Atty.*

71 United States circuit court for the district of Minnesota, term minutes June term, A. D. 1874. June 19, 1874.

UNITED STATES OF AMERICA *vs.* FORTY-THREE GALLONS OF WHISKY AND OTHER property, Bernard Lariviere and Charles Grant, claimants.	Before Hon. Samuel F. Miller, judge.

This action, which comes to this court from the United States district court for this district by writ of error, coming on to be heard, was argued by counsel and submitted; and thereupon the court, being fully advised in the premises, doth order, adjudge, and decree that the demurrer and exceptions interposed by the claimants to the information filed by the plaintiff in this suit in said district court be, and they are hereby, sustained, and that this action be, and it is hereby, dismissed.

And it is further ordered and adjudged that the property so proceeded against, and all and singular the same, be, and the same is hereby, restored to Bernard Lariviere, claimant, from whose possession the same was taken.

72 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Horatio E. Mann, clerk of the circuit court of the United States of America for the district of Minnesota, in the eighth circuit, do hereby certify that the foregoing pages, numbered from one to seventy-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the United States of America vs. Thirty-three Fox Pelts, forty-three gallons of whisky, and other property, Bernard Lariviere and Charles Grant, claimants, as the same remain of record and on file in my office as such clerk.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this second day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] H. E. MANN, *Clerk.*

(Indorsement on cover:) No. 257. The United States, plaintiffs in error, vs. Bernard Lariviere and Charles Grant, claimants of forty-three gallons of whisky & other property. Minnesota C. C. U. S. Filed 19th September, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 61.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

BERNARD LARIVIERE AND CHARLES GRANT, CLAIMANTS OF FORTY-THREE GALLONS OF WHISKEY AND OTHER PROPERTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

ARGUMENT FOR CLAIMANTS.

C. K. DAVIS, and
M. LAMPREY,
Counsel for Defendants in Error.

Supreme Court of the United States.

THE UNITED STATES, *Plaintiff in Error*,

against

BERNARD LARIVIERE AND CHARLES GRANT, claimants of Forty-three Gallons of Whiskey, and other property, *Defendants in Error*.

Argument for Claimants.

STATEMENT OF FACTS.

The county of Polk, in the State of Minnesota, was created and organized by act of the Legislature of that State, approved July 20th, 1858. (Compiled Statutes of Minnesota, 1849—1859, p. 107.)

The territory which it comprises was ceded by the Indians to the United States by two treaties.

First—By the treaty of 1855 (10 Statutes, 1165), by a cession which included the southeastern portion of what is now Polk county.

Second—By the treaty of 1863 (13 Statutes, 667), by a cession which included the remainder of the county.

Article 7 of each of these treaties provides, in substance, that the laws of the United States, prohibiting the sale and introduction of spirituous liquors in the Indian country, shall be in force in the country ceded until otherwise provided by Congress.

The village of Crookston, where the property in question was seized, in Polk county, is situate in the territory ceded by the treaty of 1863, and is over thirty miles distant from any Indian reservation.

On the 10th of October, 1874, Lariviere had at Crookston a stock of furs and merchandise, including about forty-eight gallons of liquor, all of which was seized as forfeited, and proceeded against in this action upon the claim that by the force of article 7 of the treaty of 1864, the property was forfeited, notwithstanding the fact that, by the treaties cited, the place at which the property was, had ceased to be Indian country.

Bernard Lariviere and Charles Grant intervene as claimants, and except to the sufficiency of the information substantially as follows:

That the Court has no jurisdiction. That it appears from the information that the property was never introduced into the Indian country. That it appears, on the contrary, from the information, that the property (being a stock of goods,) was searched and seized at Crookston, in the county of Polk, in the State of Minnesota, the same being an organized county, and that Crookston is not in, or adjacent to, or near any Indian country.

The county of Polk is a portion of the territory ceded by this treaty, and has been organized for many years, with all the civil officers recognized by the constitution and laws of the State of Minnesota, and in the exercise of their full power and authority.

The importance of this case arises from the fact that it involves very grave questions as to the relative sovereign rights of this State and of the United States over a large portion of Minnesota. And the question is, had the General Government, under the treaty making power, the right, when the treaties in question were made with the Indians, the power to extend by treaty compact, to which the assent of the State was not obtained, the intercourse act of 1834, and subsequent acts, to the territory in question.

A subordinate form of the question is, did not the legislation by which Minnesota was admitted into the Union, take this particular region where Crookston is, entirely out of the scope of the act of 1834—so entirely that treaties made before the date of the admission of Minnesota into the Union ceased to be effectual so far as they provide that the act of 1834 shall extend to territory ceded while we were a Territory, and that treaties made after the admission are nugatory in so far as they attempt to extend this penal law of the United States over the ceded area?

I.

It is not denied that this tract was ceded long ago; but it is maintained that, because the treaties by which the cession was made, contain stipulations that the trade and intercourse acts shall continue and be in force within the country ceded until otherwise provided by Congress, that therefore, for all time to come, until Congress intervenes, the domain of Minnesota, whether owned by the United States as a proprietor, or even after it has passed into the ownership of private persons, shall be subject to the peculiar laws which by their very terms are applicable to Indian country, and to that alone.

What, then, is Indian country, and by what processes does it lose that character?

"Indian country" is defined by section 1, act of June 30, 1834 (4 *Stat.*, 729; 1 *Brightley*, 427), as follows:

"That all that part of the United States west of the Mississippi river, and not within the States of Missouri and Louisiana, or the Territory of Arkansas, and also all that part of the United States east of the Mississippi river, and not within any State, to which the Indian title has not been extinguished, for the purpose of this act shall be taken and deemed to be the Indian country."

As to the region west of the river, this allotment included what is now Kansas, Nebraska, Iowa, and Minnesota.

Whenever the Indian title was extinguished by any cause, and the United States became the owner, relieved of the qualified and subordinate title of the Indian, the country ceased to be Indian country.

Such complete investiture of title in the United States has withdrawn from the operation of the act of 1834 all of the lands in these States, excepting, perhaps, the reservations since created, and even this exception is doubtful unless the force of the act has been properly preserved by the act of admission, or by the consent of the State given thereafter.

The process by which land ceases to be Indian country is declared by the act of 1834, by declaring to be Indian country all that territory to which the Indian title has not been extinguished.

If the Indian title to what is now Minnesota had been extinguished prior to 1834, then Minnesota would not have been within the terms of the statute.

It has been extinguished since that date, and by each act of extinguishment so much territory has ceased to be subject to the law, because as to it nothing remains for the law to act upon.

Ports under blockade are analogous. So long as they continue in the status in which they are fixed by events and by the proclamation of blockade, goods or ships found within them are subject to forfeiture. But when the blockade is abandoned or declared to be raised, then all property which would be guilty under the preceding circumstances becomes innocent.

That there has been a complete and utter extinguishment of the Indian title to this country, is beyond all question:

First—By the treaty of 1855 (10 Stat., 1165,) the southeastern portion of what is now Polk county was ceded.

Second—By the treaty of 1863 (p. 667, vol. 13, Stat.), the remaining country, now Polk county, was ceded.

By these cessions the United States became the absolute owner of the territory. The Indian title was wholly divested by grant, and by that grant the country ceased to be Indian country, and the law ceased to be operative for want of subject matter.

These considerations alone seem to us decisive of this case. But right here the government asserts the treaty making power, and maintains

II.

That by treaty made with these barbarians, before the State was admitted, and by another treaty made afterwards, the act of 1834 is preserved as to these ceded lands.

Article 7, in each of these treaties, provides, in substance, that the trade and intercourse acts shall continue and be in force within the country ceded until otherwise provided by Congress.

We maintain—

That whatever force the article in the treaty of 1855 once had, it was annihilated by the act which admitted this State into the Union, and that under the terms of the admission of Minnesota these articles have no force whatever.

The articles themselves involve a solecism. They can be correctly paraphrased as follows: "A law which prohibits the introduction of liquor into the Indian country shall also, by this treaty, prohibit its introduction into territory not Indian country."

By the act of February 26, 1857, authorizing a State government, the inhabitants of all that is now Minnesota, without reservation of any territory whatever, for forts or Indian country, were "authorized to form for themselves a constitution and State government by the name of the State of Minnesota, and to come into the Union *on an equal footing with the original States, according to the federal constitution.*"

Section 5 contains the propositions offered for the acceptance of the people, and among these propositions there is nothing on the subject of reservations, or jurisdiction or power in the United States to abridge the soverignty of the State by treaty.

The State was admitted by the act of May 11, 1858, without any other condition except that all laws, not locally inapplicable, shall have the same force and effect within that State *as in other States of the Union.*

Section 2, article 15, of the constitution of Minnesota, adopted pursuant to the act authorizing our people to form a State government, and confirmed in the usual manner by Congress, when the State was admitted, grants to persons residing on Indian lands the same privileges and rights of citizens as though they lived in any other portion of the State, and subjects them to taxation.

Here, then, is a State admitted without reservation, as to the subject in question, her boundaries defined without exception, every reservation, as to jurisdiction, which the federal government deemed necessary, expressed in the statute, under which admission was given,—a State admitted on the same footing with Massachusetts, or any of the other original States,—which it is sought to abridge in her sovereignty by the constitutional power to make treaties.

Such a proposition should be narrowly scanned, as to treaties made with civilized nations. As to treaties made with these barbarian wards, which are nations only by legal fiction, and whose treaties are legal fictions also in practical effect, it is submitted the court will find the fullest warrant before it will permit them to abridge the jurisdiction of this State.

It is difficult to exalt this question into the region of international law.

But in one thing the expounders of that topic are unanimous. It is that the department of any government to whom the treaty-making function is committed, cannot by the treaty annihilate the sovereignty itself.

This State has been admitted on the same footing with the original States. Can the President and two-thirds of the Senate, by a treaty, to which the assent of Minnesota is not obtained, infringe one of the most essential privileges she enjoys, viz.: to stand in the Union the same as New York or Massachusetts?

Very different were Mr. Webster's views when he was negotiating the Ashburton treaty. He wrote to the Governors of Maine and Massachusetts requesting their co-operation. He declared to Lord Ashburton that the United States had no power to cede any of the territory claimed by the State of Maine without the consent of that State.

By that treaty a cession was made to Great Britain, but not until after commissioners from Maine and Massachusetts had taken part in the negotiations, and had assented to the boundary lines agreed upon.

The country ceded by these treaties is larger than Massachusetts. It is traversed by two railroads built by the aid of lands therein situated, granted by the United States. It contains more than 35,000 people. All of the instrumentalities of State government are there in full and efficient operation. The United States is disposing of its lands there by sale, preemption and homestead entries. Every encouraging sign which demonstrates the establishment of society and civilization is there present—to be met at this day with the pretence that by treaty between the United States and a handful of savages, this domain is Indian country.

The circuit court has passed upon analogous questions in

U. S. v. Ward, 1 *Woolw., p.* 17.
" *v. Stahl,* 1 *Woolw., p.* 193.
" *v. Yellow Sun,* 1 *Dillon,* 277.

The judgment should be affirmed.

C. K. Davis, and
M. Lamprey,
For Defendants in Error.

Oct 20 1876
Mr Smith
submits on brief

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

THE UNITED STATES, PLAINTIFFS IN ERROR,
v.
BERNARD LARIVIERE ET AL., CLAIMANTS OF CERTAIN PROPERTY.
} No. 61.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Brief for the Plaintiffs.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

THE UNITED STATES, PLAINTIFFS IN error,
v.
BERNARD LARIVIERE ET AL., CLAIMANTS of certain property.
No. 61.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF FOR THE PLAINTIFFS.

STATEMENT OF THE CASE.

This is a libel instituted in behalf of the Government, by its attorney, in the district court of the United States for the district of Minnesota, for the condemnation and forfeiture of forty-three gallons of whisky and of other property claimed by the defendants. The alleged ground of forfeiture is that the owners of this property, "in the county of Polk, in the State and district of Minnesota," "did carry and introduce from some place and territory outside the Indian country, *and outside of the ceded country hereinafter mentioned* * * * *into the country ceded to the said United States by the Red Lake and Pembina* *bands of Chippewa Indians*, in and by the treaty between the said United States and said bands of Chippewa Indians, made and concluded in Minnesota" October 2, 1863, and proclaimed May 5, 1864, " to wit, *into that part thereof included and being in the county of Polk, in the State and district aforesaid*, certain spirituous liquors, to wit, forty-three gallons of whisky, two gallons of Iron Mountain whisky, two gallons of cherry brandy, two gallons of Jamaica rum, and twenty gallons of bitters, said bitters being composed mainly of alcohol," which introduction was contrary to the acts of Congress specified and to the statutes of the United States; that Lariviere had these goods in his possession at Crookston, in said county of Polk, " and in said ceded country;" and that R. M. Platt, then and there an Indian agent duly appointed by the United States, having been informed and suspecting that Lariviere " had introduced into the aforesaid country so ceded to the United States " certain spirituous liquors, in violation of law, caused his stores, packages, and peltries and their places of deposit to be searched; that upon such search these liquors were found mingled with the other goods, whereupon the whole were seized by Platt and libeled.

In a second count it was alleged that Lariviere intended " to sell, dispose of, and distribute said spirituous liquors to and among the bands and tribes of Chippewa Indians then and there under the charge of Indian agents duly appointed by the United States, and frequenting then and there said county of Polk and village of Crookston, and living then and there in and near the same, the whole of said country so ceded, and particularly that part thereof being and included in said county of Polk, being a wild, uncultivated, and sparsely-settled country, frequented and inhabited mainly by said Chippewa Indians, and lying and being adjacent to and *immediately adjoining* certain lands set apart for and exclusively occupied by said Chippewa Indians as their reservation," and there introduced the liquors specified for that purpose, &c.

A third count declared further that the liquors were not so introduced by order of the War Department nor of any officer thereto duly authorized.

The defendant Lariviere, who first appeared in response to the monition, demurred and excepted to the libel upon the ground that it appeared from its recitals that the court had no jurisdiction; that the property never was introduced, nor was it intended to be introduced, into any Indian country; but that it was affirmatively shown by the libel that it was searched and seized at Crookston, in the county of Polk and State of Minnesota, the same being an organized county, and said Crookston not being in or adjoined to or near any Indian country; hence, that the seizure was without any authority of law, &c., &c. The other defendant, Grant, also excepted and demurred becaused it appeared in the libel that the goods were seized within the jurisdiction of the State of Minnesota and not on lands within any Indian country or in any country exclusively within the jurisdiction of the United States. The district court sustained the demurrer and exceptions, and ordered the libel dismissed. The cause was taken to the circuit court, where this order was affirmed, and the case was then brought to this court.

ASSIGNMENT OF ERRORS.

The libellants and plaintiffs assign as error this order, judgment, and decree of the circuit court in this cause, viz:

"And thereupon the court, being fully advised in the premises, doth order, adjudge, and decree that the demurrer and exceptions interposed by the claimants to the information filed by the plaintiff in this suit, in said district court, be, and they are hereby, sustained, and that this action be, and it is hereby, dismissed. And it is further ordered and adjudged that the property so proceeded against, and all and singular the same, be, and the same is hereby, restored to Bernard Lariviere, claimant, from whose possession the same was taken."—(Record, page 27, folio 71.)

STATUTES CITED.

"The State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever." (Act approved May 11, 1858, c. 31, §1, 11 Stats., 285.)

The act June 30, 1834, c. 161, §20, relating to the subject of Indian commerce, is found in 4 Stats., 732; but as it is fully recited in its amended form in the act of March 15, 1864, c. 33, it is not printed here.

The act of March 15, 1864, c. 33, is as follows:

"*Be it enacted, &c.*, That the twentieth section of the 'act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers,' approved June thirtieth, eighteen hundred and thirty-four, be, and the same is hereby, amended so as to read as follows, to wit:

"'SEC. 20. *And be it further enacted*, That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquors or wine to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States, or shall introduce or attempt to introduce any spirituous liquor or wine into the Indian country, such person, on conviction thereof, before the proper district or circuit court of the United States, shall be imprisoned for a period not exceeding two years, and shall be fined not more than three hundred dollars: *Provided, however*, That it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country if it be proved to be done by order of the War Department or any officer duly authorized thereunto by the War Department. And if any superintendent of Indian affairs, Indian agent, or sub-agent, or commanding officer of a military post, has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country, in violation of the provisions of this section, it shall be lawful for such superintendent, agent, sub-agent, or commanding officer to cause the boats, stores, packages, wagons, sleds, and other places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bonds put in suit. And it shall moreover be the duty for any person in the service of the United States or for any Indian to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. And in all cases arising under this act Indians shall be competent witnesses.'" (13 Stats., 29.)

TREATY.

By the treaty between the United States and these Chippewas, proclaimed May 5, 1864, it was stipulated:

"ARTICLE VII. The laws of the United States now in force, or that may hereafter be enacted, prohibiting the introduction and sale of spirituous liquors in the Indian country, shall be in full force and effect throughout the country hereby ceded, until otherwise directed by Congress or the President of the United States." (13 Stats., 668.)

BRIEF.

The question, briefly stated, is whether or not, under the Federal Constitution, legislation, and authority, liquors intended and *attempted* to be introduced and sold among Indian tribes living within the limits of Minnesota are liable to seizure and forfeiture, when searched for and found upon lands ceded to the United States by an Indian treaty containing a prohibition of such introduction and sale, and when seized in immediate proximity to an Indian reservation.

The relation of the Indians to the Government is peculiar and *sui generis*. The right to extinguish the Indian title to lands belongs to the sovereign, and the individual citizen can obtain no title to them, recognizable in our courts, except with the assent of the Government. (Johnson *v.* McIntosh, 8 Wheaton, 543, 603; Cherokees *v.* Georgia, 5 Peters, 1, 17, &c.; Worcester *v.* Georgia, 6 Peters, 515, 581, &c.; 3 Kent's Com., *378 *et seq.;* Lee *v.* Glover, 8 Cowan, 189; Harmon *v.* Battier, 12 Sm. and Mar., 425; act of March 30, 1802, § 12.)

The Indian title can only be extinguished, then, by negotiation with the tribe or nation, *i e.*, by treaty. A State cannot enter into a treaty. Hence, the power to receive cession of Indian lands, wherever situate, is exclusively in the Federal Government. (6 Peters, 581 *et seq.*)

So long as the Federal Government recognizes the tribal existence and condition of an Indian community, so long it constitutes a "domestic, dependent nation"—"dependent" as to the United States—though within the territorial limits of a State—*imperium in imperio.* (5 Peters, 17; Kansas Indians, 5 Wallace, 756, 757.)

The members of the tribe are not citizens of the State in which they dwell. (Goodell *v.* Jackson, 20 Johns., 694, 710, *et seq.*)

The foregoing remarks and citations have been made to emphasize the fact that, as tribes and territorially, the Indians and their lands have an existence and *status* distinctly marked and widely separated, and different from those of the people and territory by which they are surrounded.

Those decisions which hold that they are, nevertheless, subject to the *criminal* jurisdiction of the State courts, over *offenses not connected with commerce*, will not be here discussed, because it is not perceived that they affect the present question, though we notice a reference to them at the close of the opinion of the district judge. (Record, 22.) They do not apply to a violation of a United States statute, to an act prohibited only by Federal legislation, enacted under the constitutional power to regulate commerce with the Indian tribes.

It is upon this provision of the Constitution, and upon the statutes passed in pursuance of it, that the claim for condemnation in this case will be based.

Under the old articles of confederation of 1777, Art. IX, it was provided that "the United States in Congress assembled shall also have the exclusive right and power of * * * regulating the trade and managing all affairs with the Indians *not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated.*" (1 Elliot's Debates, 82.) Comparing that with the phraseology of the present Constitution, article 1, section 8, Madison says in the Federalist, No. XLI: "The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of confederation, which render the provision obscure and contradictory. The power is there restrained to Indians not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State is not yet settled; and has been a question of frequent perplexity and contention in the Federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the rights of internal legislation, is absolutely incomprehensible. This is not the only case in which the articles of confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union with complete sovereignty in the State; to subvert a mathematical axiom by taking away a part and letting the whole remain."

"As it now stands it is applicable to all the Indian *tribes*, and it is immaterial whether they continue within the boundaries of a State or inhabit a part of one of the Territories, or roam at large through regions over which the United States have no jurisdiction; the trade with them is, in all its forms, subject exclusively to the regulations of Congress." (Duer's Const. Jur., 281; Rawle on the Const., ch. IX, 84; 2 Story on Const., §§ 1097-1101.)

The first legislation under this clause was by the temporary act of July 22, 1790, c. 30, (1 Stats., 135,) continued in force, somewhat changed, by acts of March 1, 1793, c. 19, (1 Stats., 329,) of May 19, 1796, c. 30, (1 Stats., 469,) and of March 3, 1799, c. 46, (1 Stats., 743.) The system of regulation thus created was rendered permanent by act of March 30, 1802, c. 13, (2 Stats., 139.) The next general act upon this subject was that of June 30, 1834, c. 161, (4 Stats., 729.) Its twentieth section, as amended by the act of February 13, 1862, c. 24, (12 Stats., 339)—(identical with that of March 15, 1864, c. 33,) (13 Stats., 29,) hereinbefore recited *in extenso*, except that the latter gives the circuit court jurisdiction, as well as the district court, and makes one other immaterial verbal change, substituting "the duty of" instead of "lawful for")—was the law in force when these goods were seized. The Government contends that its provisions extended to this ceded country; or, at any rate, to the adjoining Indian reservations.

The first section of this act of 1834, c. 161, defines what shall be deemed "Indian country," thus: "That all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana, or the Territory of Arkansas, and also that part

East of the Mississippi River

of the United States and not within any State to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country."

What is now the State of Minnesota is embraced within this definition of "Indian country." It has not since been taken out of that category (as to lands to which the Indian title has not been extinguished, at any rate) by any subsequent express legislation.

The language used by Congress and the courts shows that the mere erection of the territory and its citizens into a State did not, *ipso facto*, cause it to cease to be "Indian country." Thus, in the act of June 14, 1858, c. 163, § 3, (11 Stats., 363,) relating to the execution of "process in the Indian country," the marshal is "authorized to employ a *posse comitatus*, not exceeding three persons in *any of the States* respectively," &c.

In the cited case of United States *vs.* Bailey, 1 McLean, 235, the learned judge said there could be no doubt of the intention of Congress to punish all offenses, "and especially the crime of murder committed in the Indian country, *though within the limits of a State.*" See, also, United States *vs.* Cisna, *Id.*, 254.

In United States *v.* Ward, 1 Woolw. C. C., 19, Miller, J., said: "The circumstances, much enlarged upon at the bar, that the reservation is but a small tract of country; that emigration has filled up the adjoining lands; that the State has included the *locus in quo* within an organized county, and by its courts of justice, and its people by their customs and intercourse, have assumed new and close relations to this tribe of Indians, afford no assistance in determining the question before us."

Upon page 21 he says: "The act of June 30, 1834, provides that the section of country in which this reservation is situated shall be Indian country," &c. "This provision brings the reservation within our jurisdiction. If it remained unchanged or unqualified, it would conclude the question. It is insisted that the act * * * admitting the State into the Union withdraws the locality from the force and effect of the act." An examination of the act for the admission of Kansas, then, leads the court to conclude that it had no jurisdiction to punish the murder of one white by another committed within an Indian reservation in that State. But this does not affect the question now before the court, except that it shows that the mere admission of a State did not cause all the territory included within its limits to cease to be Indian country.

The right to regulate trade with the Indians, wherever found, irrespective of State limits, rests upon constitutional sanction, while there is none such granting *criminal* jurisdiction over Indian reservations. This act of 1834, as amended, is "a regulation of commerce." "Commerce with the Indian tribes means commerce with the individuals composing those tribes. The act before us describes this precise kind of traffic or commerce, and therefore comes within the terms of the constitutional provisions." (United States *v.* Holliday, 3 Wallace, 417, per Miller, J.) The opinion then proceeds to show that the jurisdictional limits of the States do not affect this provision. Then it says: "It follows from these propositions, which seem to be incontrovertible, that if commerce, or traffic, or intercourse, is carried on with an Indian tribe, or with a member of such tribe, it is subject to be regulated by Congress, although within the limits of a State. The locality of the traffic can have nothing to do with the power. The right to exercise it in reference to any Indian tribe, or any person who is a member of such tribe, is absolute, without reference to the locality of the traffic, or the locality of the tribe, or the member of the tribe with whom it is carried on."

Having this general power over the subject of commerce or intercourse with the Indian tribes and their members, Congress could rightfully define the "Indian country" within which the unlicensed introduction and sale of liquors were prohibited. The act of 1834, as amended, was within its constitutional powers. It could withdraw from the operation of this statute so much or so little of this territory as it thought would best subserve the interests of this intercourse and commerce, or could (from like considerations) enlarge its boundaries. It is for the United States to recognize and declare the tribal condition of Indian bands, and the courts will follow the executive in this particular. (5 Peters, 1; 6 Peters, 515.)

Treaties are the law of the land, superior to any State legislation, and valid even as municipal regulations until superseded by some act of Congress. (Ware *v.* Hylton, 3 Dallas, 236, *et seq.*, and 361; Taylor *v.* Morton, 2 Curtis C. C., 454; 1 Story on Const., § 1838; 6 Peters, 579, *et seq.*) Hence, a guarantee of quiet enjoyment of lands by an Indian tribe "extends to the acts of the several States and of all the citizens of the Union." (Fellows *v.* Denniston, 23 N. Y., 427, *et seq.*) So that their rights thereto cannot be invaded by State taxation. (*Id.*, Kansas Indians, 5 Wallace, 737; N. Y. Indians, *id.*, 762; Foster *v.* Co. Commis., 7 Minn., 140.)

Marden vs. Ingersoll, 6 Mich. 373;

The private rights of citizens are bound by such treaties. (Lattimer *v.* Poteet, 14 Peters, 4; United States *v.* Stone, 2 Wallace, 525.) And a right to inherit may be conferred by treaty upon an alien in contravention of the statutes of the State within whose limits the inheritable lands lie. (People *v.* Gerke, per Sup. Ct. of Cal., in 4 Am. Law Reg., 604, citing 2 Wheat., 459; 4 Wheat., 453; 8 Wheat., 464; 9 Wheat., 489; 10 Wheat., 181.) If the Federal Government has this general power to control the particular rights of States and of individuals by treaty stipulations, *a fortiori* can this power be exercised over a subject like the present, coming within the clause relating to the regulation of commerce.

Yeaker vs. Yeaker 4 Metc. (Ky) 33

"The Indians are acknowledged to have an unquestionable, and heretofore unquestioned, right to the lands they occupy until that right shall be extinguished by a voluntary cession to our Government. * * * Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian. They look to our Government for protection," &c., &c. (Cherokees *v.* Georgia, 5 Peters, 17.)

Such were the mutual relations of the parties when, by the treaty of October 2, 1863, these Chippewas agreed to relinquish their "unquestionable and unquestioned right to the lands" thereby ceded, upon the express condition that the commercial regulations as to the introduction of spirituous liquors should be continued in force over them. This was a reasonable stipulation, to which the contracting parties had the right to agree. In view of their dependent situation, "from the very moment the General Government came into existence, to this time, it has exercised its power over this unfortunate race in the spirit of humanity and justice, and has endeavored by every means in its power to enlighten their minds and increase their comforts, and *to save them, if possible, from the consequences of their own vices*." (United States *v.* Rogers, 4 Howard, 572.)

The Federal agents, conferring with the headmen of the tribe, (Fellows *v.* Blacksmith, 19 Howard, 366) "came to the conclusion that spirituous liquors, when used as a beverage, are productive of a great variety of ills and evils to the people, both in their individual and in their associate relations; that the least use of them for such a purpose is injurious, and suited to produce, by a greater use, serious injury to the comfort, morals, and health; that the common use of them for such a purpose operates to diminish the productiveness of labor, to injure the health, to impose upon the people additional and unnecessary burdens, to produce waste of time and of property, to introduce disorder and disobedience to law, to disturb the peace and to multiply crimes of every grade. Such conclusions are justified by the history and experience of man." (Preston *v.* Drew, 33 Maine, 560-1.) If this is true in civilized society, it applies with even greater force to the Indian communities. Spirituous liquors have been more potent than any other agency in promoting Indian hostilities upon our frontiers; and it was to exclude them, or to regulate their admission, as well as that of arms and ammunition, that the *exclusive* power (6 Peters, 557) of regulating intercourse with the Indian tribes was conferred upon the United States. "The policy of this act is the protection of those Indians who are, by treaty or otherwise, under the pupilage of the Government, from the debasing influence of the use of spirits, and it is not easy to perceive why that policy should not require their preservation from this, to them, destructive poison, when they are *outside of a reservation*, as well as within it." The evil effects are the same in both cases. (United States *v.* Holliday, 3 Wallace, 415-6.) Accordingly, this statute was enacted as a commercial regulation, (*Id.*, 417,) and power is given to punish that as an offense, on account of its commercial relations, which would otherwise be none, and that, too, without asserting any general jurisdiction. (United States *v.* Bailey, 1 McLean, 234; United States *v.* Cisna, *Id.*, 254.) The record here shows the very different position as to the situation of their reservation and the proximity of white settlements, of these Chippewas from that of the Indians named in the last cited case. It justifies the insertion of Art. VII in this treaty, if it were not that the will of the contracting parties stands as the sufficient reason for their action.

This is very different from an attempt to withdraw the Indians and their lands entirely from the criminal jurisdiction of the State in which they are found; as was the case in 1 Dillon, 271; 1 McLean, 234 and 254, and in 1 Woolw. 17. It bases the jurisdiction upon the Federal authority over the *subject-matter* and thus places Minnesota in a position of equality with the other States; (1 McLean, 254,) since by the Constitution, treaty, and legislation certain acts are prohibited upon grounds that make no distinction between the States. The fact that this ceded territory is within the limits of Minnesota is a mere incident and not the foundation of the prohibition. The rightful effect to be given such a treaty was recogized by the supreme court of Minnesota in United States *v.* Shanks, 15 Minn., 369.

Not only do the decisions hereinbefore cited show that it was the intention that the boundaries of the Indian country west of the Mississippi should not be changed merely by the erection of States therein, but this is apparent from the elaborate reports of the committees which accompanied the introduction into Congress of this legislation of 1834. (Reports, &c., vol. 4, No. 474.) This act of 1834 was enacted to neutralize and supersede the effect of the decision of this court in Am. Fur Co. *v.* United States, 2 Peters, 358, that by the cession of lands it ceased to be Indian country. But the express treaty stipulation in the present instance precludes all controversy upon this point.

The finding of the goods upon the interdicted territory would throw upon the claimant the burden of proving a justification, (2 Peters, 358;) but by his demurrer he admits the charges of the libel. Among these is the statement (record 5, folios 15 and 16) showing the nature of the country and its population, and that the place of seizure being "adjacent *to and immediately adjoining* certain lands set apart for and *exclusively* occupied by said Chippewa Indians as their reservation," and that the liquors were intended to be sold to them.

That they were "about to be introduced" into the reservation was a ground of forfeiture.

This being admitted, it would seem the claimants can only succeed if they can show that the regulation of commerce by Congress must be confined to intercourse outside of State limits or within Indian reservations. This court has already determined that such is not the law.

EDWIN B. SMITH,
Assistant Attorney-General.

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